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Crl.O.P.Nos.18382 & 20382 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 28.06.2022

CORAM

THE HONOURABLE Mr.JUSTICE **G.K.ILANTHIRAIYAN**

Crl.O.P.Nos.18382 & 20382 of 2020
and Crl.M.P.No.7182 of 2020

1. A.Ashok
2. E.Praveen Babu

... Petitioners in both
Crl.O.Ps.

Vs

1. The Inspector of Police
Mayiladuthurai Police Station,
Mayiladuthurai – 609 001.

2. R.Balu
S/o. Rajarathanam,
Head Constable,
Mayiladuthurai Police Station,
Mayiladuthurai – 609 001.
(Crime No.533 of 2019)

... Respondents in Crl.O.P.
No.18382 of 2020

1. The Superintendent of Police,
Nagapattinam District,
Nagapattinam – 600 001.
2. The Deputy Superintendent of Police,
Mayiladuthurai Division,
Mayiladuthurai – 609 001.

3. The Inspector of Police
Mayiladuthurai Police Station,
Mayiladuthurai – 609 001

.... Respondents in Crl.O.P.
No.20382 of 2020



Crl.O.P.Nos.18382 & 20382 of 2020

Prayer in Crl.O.P.No.18382 of 2020: Criminal Original Petitions filed under Section 482 of Cr.P.C, praying to call for the records relating to the proceedings in Crime No.533 of 2019 on the file of the Inspector of Police, Mayiladuthurai and quash the same.

Prayer in Crl.O.P.No.20382 of 2020: Criminal Original Petitions filed under Section 482 of Cr.P.C, praying to direct the third respondent herein to register the complaint of the petitioners dated 10.01.2020 and investigate the same in accordance with law and file a FIR within the time fixed by this Court.

For Petitioners in

both Crl.O.Ps. : Mr.M.A.Aruneshe
For Mr.M.T.Arunan

For Respondents in

both Crl.O.Ps. : Mr.A.Gopinath
Government Advocate (Crl. Side)

COMMON ORDER

Crl.O.P.No.18382 of 2020 :-

This petition has been filed to quash the F.I.R. in Crime No.533 of 2019 registered by the first respondent police for offences under Sections 294(b), 352, 353, 506(2) of IPC and Section 3(1) of Prevention of Damage to Public Property Act, 1984, as against the petitioner.



2. The case of the prosecution is that on 11.12.2019, when the police personnel viz., the second respondent herein was on duty inside the Kamarajar bus stand, Mayiladuthurai, three persons were travelled in a motor cycle. Therefore, the petitioners were asked by the police personnel about triples for which, they scolded the said police personnel with filthy language and also attacked him. They also damaged some articles. Hence the complaint.

3. The learned counsel appearing for the petitioners submitted that the first petitioner is the student and the second petitioner is working in a tyre trading company at Mayiladuthurai as Manager and he is in-charge of trading the tyres in the above said company. While being so, on 11.12.2019, the second petitioner went to Mayiladuthurai bus stand to pick up new tyres sent from Chidambaram through Jahir Hussain bus service. He parked his two wheeler at a shop opposite to the police outpost of the first respondent police station.

3.1. He further submitted that on noticing the parking of the vehicle, the second respondent came to the second petitioner and scolded him with filthy language. He also threatened that he would arrest him if the vehicle parked there. He also assaulted the second petitioner on his feet. In the said quarrel, the second petitioner's spectacles were broken. The said incident was



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recorded by the first petitioner in his mobile phone. Therefore, the second respondent caught hold the first petitioner and abused both the petitioners in filthy languages. Thereafter, the second respondent had taken both the petitioners to Police Station and registered a case as against both the petitioners, as if they came on a motor cycle in triples and assaulted the second respondent.

3.2. The learned Counsel appearing for the petitioner further submitted that the petitioners are innocent persons and they have not committed any offence as alleged by the prosecution. Without any base, the first respondent police registered a case in Crime No. 533 of 2019 for the offences under Sections 294(b), 352, 353, 506(2) of IPC and Section 3(1) of Prevention of Damage to Public Property Act, 1984, as against the petitioners. Hence he prayed to quash the same.

4. The learned Government Advocate (Crl. Side) appearing for the respondents would submit that after completion of investigation, the first respondent filed final report before the learned Judicial Magistrate, Mayiladuthurai and the same is not yet taken on file. Hence, he prayed for dismissal of the present petition.



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5. Heard Mr.M.A.Aruneshe, learned counsel appearing for the petitioner and Mr.A.Gopinath, learned Government Advocate (Crl. Side) appearing for the respondents.

6. It is seen that after registration of FIR, the petitioners were brought to remand before the learned Judicial Magistrate, Mayiladuthurai, and the learned Magistrate recorded the petitioners' statement on their remand request that the accused 1 & 2 produced before her and perused the records. A1 had swelling in his left hand and A2 had injuries in his left forehead, swelling in his left shoulder. Both told that the police assaulted them. Further recorded that on perusal of FIR and remand request, the police narrated that the petitioners were coming in triples but they mentioned only two accused viz., the petitioners and not mentioned about the third person. More over, the damaged things also not mentioned in the FIR. Therefore, the learned Magistrate remanded the petitioners, only for the offences under Sections 294(b), 352, 353, 506, 427 of IPC.

7. After the above said occurrence, the petitioners lodged complaint before the State Human Rights Commission in SHRC Case Nos.22 & 326 of 2020 and the said Commission conducted detailed enquiry and by an order



dated 10.05.2021 concluded as follows :-

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“25. Considering the oral and documentary evidence and also the arguments of both the parties this Commission is of the considered opinion that the complainant proved the allegations stated in the complaint that on 11.12.2019, around 11.50 am, when the P.W.1 went to Mayiladuthurai bus stand to pick up the new tyres and parked his motorcycle at a shop opposite to the police outpost in the bus sand and at that time, the first respondent came there and threatened that he would arrest him for parking the vehicle inside the bus stand and slapped him and the incident was recorded by the complainant Ashok in his mobile and on seeing this, the 1st respondent abused both of them in filthy language and took them in an auto to the police station and registered a false complaint against them as if, they came on a motorcycle in triples and assaulted the 1st respondent and they were beaten up by the respondents severely and they sustained injuries and took treatment for 6 days as inpatients. Therefore, the action on the part of the respondents is not in accordance with law and hence this Commission holds that the respondents had violated the human rights of the PW2 and Ashok. This point is answered accordingly.

26. Point No.2:- While answering the Point No.1, this Commission has held that the respondents had violated the human rights of the Complainant. Hence, this



Commission is of the considered view that the P.W.1 and Ashok are entitled to receive compensation for the violation of human rights from the respondents and fixing of Rs.1,00,000/- each as compensation to the P.W.1 and Ashok would be fair and reasonable and would meet the ends of justice. Hence, this Commission holds that the P.W.1 Praveenbabu and Ashok are entitled to get Rs.1,00,000/- each from the respondents and to initiate disciplinary action against them. This Point is answered accordingly.

27. In the result, this Commission recommends as follows :-

(i) The Government of Tamil Nadu shall pay a compensation of Rs.1,00,000/- (Rupees one lakh only) each to the Complainants Praveenbabu and Ashok (Totally Rupees two lakhs only) within one month from the date of receipt of a copy of this Recommendation and the Government of Tamil Nadu may recover Rs.50,000/- each from the respondents 1 to 4 (50,000 X4 = 2,00,000)

(ii) This Commission also recommends to initiate disciplinary action against the respondents 1 to 4 as per the Rules.”

8. The State Human Rights Commission categorically held that the respondents foisted false case as against the petitioners as if, they came on



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motorcycle in triples and assaulted the second respondent herein. In fact, the respondents had beaten up them, for which the petitioners sustained grievous injuries and admitted in the hospital for six days. The act of the respondents is not in accordance with law and they violated the human rights of the petitioners herein. Further the respondents and Sub Inspector of Police of the first respondent Police Station were directed to pay compensation of Rs.1,00,000/- each to the petitioners herein.

9. Therefore, it is made clear that when the second petitioner was parking his motorcycle, the second respondent herein interfered with him and had taken him to the Police Station. Even according to the case of the respondents that the petitioners came on motorcycle in triples. But there is no third person in the FIR and there is absolutely no whisper about the person who was sat as third person in motorcycle. It is also not mentioned in the FIR about the damaged things. The said fact clearly recorded by the learned Judicial Magistrate, while the petitioners were produced for remand.

10. Even assuming that the alleged occurrence was taken place, there is no specific averment as against the petitioners to attract the offence under Sections 294(b), 352, 353, 506(2) of IPC and Section 3(1) of Prevention of



Damage to Public Property Act, 1984. To attract the offence under Section 294(b) of IPC, there must be an uttering of words to affect the person who lodged the complaint. In this regard it is relevant to extract the Section 294(b) of IPC, as follows :-

"294. Obscene acts and songs —Whoever, to the annoyance of others— (a) does any obscene act in any public place, or (b) sings, recites or utters any obscene song, ballad or words, in or near any public place, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine, or with both."

11. Admittedly, there is absolutely no words uttered by the petitioners as such to constitute the offence under Section 294(b) of IPC, there is no averments and allegations. Further the charges do not show that on hearing the obscene words, which were allegedly uttered by the petitioners, the witnesses felt annoyed. No one has spoken about the obscene words, they felt annoyed and in the absence of legal evidence to show that the words uttered by the petitioners annoyed others, it cannot be said that the ingredients of the offence under Section 294(b) of IPC is made out. In this regard, it is relevant to rely upon the judgment reported in **1996(1) CTC 470** in the case of **K.Jeyaramanuju Vs. Janakaraj & anr.**, which held as follows :-



"To prove the offence under Section 294 of IPC

mere utterance of obscene words are not sufficient but there must be a further proof to establish that it was to the annoyance of others, which is lacking in the case."

The above judgment is squarely applicable to the present case and therefore, the offence under Section 294(b) of IPC is not at all attracted as against the petitioners.

12. Insofar as the offence under Section 352 of IPC is concerned grave and sudden provocation will not mitigate the punishment for an offence under this Section. In this regard it is relevant to extract the Section 352 of IPC as follows :-

"352. Punishment for assault or criminal force otherwise than on grave provocation —Whoever assaults or uses criminal force to any person otherwise than on grave and sudden provocation given by that person, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both."

On perusal of the FIR, no criminal force was used by the petitioners on the second respondent. Therefore, the offence under Section 352 of IPC would not attract as against the petitioners.



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13. Insofar as the offence under Section 506(ii) of I.P.C is concerned, threat should be a real one and not just a mere words when the person uttering does not exactly mean what he says and also when the person to whom threat is launched does not feel threatened actually. Whereas, in the case on hand, there is no averment to attract the offence under Section 506(ii) of I.P.C. Therefore, the impugned complaint is nothing but clear abuse of process of law and it cannot be sustained as against the petitioner.

14. Accordingly, the Criminal Original Petition in Crl.O.P.No.18382 of 2020 stands allowed and the F.I.R. in Crime No.533 of 2019 on the file of the first respondent is hereby quashed. Consequently, connected miscellaneous petition is closed.

Crl.O.P.No.20382 of 2020 :-

15. This petition has been filed to direct the third respondent herein to register the complaint of the petitioners dated 10.01.2020 and investigate the same in accordance with law and file a FIR within the time fixed by this Court.

16. It is seen that the petitioners have lodged complaint dated 10.01.2020 before the District Collector, Nagapattinam and the same has been



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forwarded to the first respondent viz., the Superintendent of Police, Nagapattinam, for taking appropriate action as against the police personnel.

Since the first respondent did not take any action, the petitioners filed this present petition with the above said prayer.

17. The learned Government Advocate (Crl. Side) appearing for the respondents submitted that on receipt of the complaint from the District Collector, Nagapattinam, the first respondent conducted detailed enquiry and closed the same by closure report dated 24.02.2021. He also produced the closure report filed by the Deputy Superintendent of Police, Mayiladuthurai, dated 24.02.2021.

18. Recording the said submission, this Criminal Original Petition in Crl.O.P.No.20382 of 2020 is closed. However, the petitioners are at liberty to file private complaint in the manner known to law, if so advised.

28.06.2022

Internet : Yes / No
Index : Yes / No
Speaking / Non Speaking order

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To

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1. The Superintendent of Police,
Nagapattinam District,
Nagapattinam – 600 001.
2. The Deputy Superintendent of Police,
Mayiladuthurai Division,
Mayiladuthurai – 609 001.
3. The Inspector of Police
Mayiladuthurai Police Station,
Mayiladuthurai – 609 001.
4. R.Balu
S/o. Rajarathanam,
Head Constable,
Mayiladuthurai Police Station,
Mayiladuthurai – 609 001.
5. The Public Prosecutor,
Madras High Court,
Chennai.



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G.K.ILANTHIRAIYAN, J.

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and Crl.M.P.No.7182 of 2020

28.06.2022